

# Modern Corporate Legal and Business Ethics: Backdating, Pretexting and Other Lapses

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## **Modern Corporate Legal and Business Ethics**

Social Responsibility and Sustainability

Stakeholder Statutes

Codes of Conduct

SOX, Patriots Act, CD&A, etc., etc.

Shareholder Activism

## **Backdating, Pretexting and Other Recent Lapses**

## **Are there any common threads to Enron, Stock Option Backdating, Pretexting, and other recent scandals?**

- “Rock star CEOs” and over-bearing management forcing the agenda.
- Modern pressures to “Get the job done quickly”.
- Decentralized / over-compartmentalized management of legal staff and/or legal tasks.
- Slippery Slope – “The path to hell is paved with good intentions”.
- Divided, interlocking, or disengaged Boards of Directors.

## Particular Challenges Facing Inside Counsel

- Inside Counsel wear many hats – lawyer vs. business advisor / member of the team.
- CEO, Board of Directors, or other officers confusing the identity of the ‘Client’.
- “Gatekeeper” vs. “Counselor” – competing models.
- Maintaining the attorney client privilege – special challenges.
- Conducting internal investigations – outside pressures and inherent conflicts.

## Developments Designed to Prevent Future Problems – How Effective?

Sarbanes-Oxley, e.g.:

- Board and board committee compliance role – independent investigations with independent counsel, accountants and other advisors.
- Section 307 “up the ladder” reporting requirements.

ABA Model Rules of Professional Conduct, Rules 1.13, 1.6 (b) (2) & (3).

ABA Task Force on Corporate Responsibility – Recommendations for more BOD direct access – status.

Corporate ethics codes of conduct.

New stock option reporting rules.

DOJ and other indictments.

Whistleblower statutes and hotlines.

Shareholder lawsuits.

## Practical Tips

- Develop systems for regularly reporting risks, liabilities, and other potential problems.
- GC – greater access to board of directors
- GC – maintain control over legal staff – especially compensation/performance issues.
- All in-house counsel – separate “legal advice” from “business advice”.

## The Three Part Test:

1. Is it truly legal (not merely “defensible”)?
2. Is it ethical? Really?
3. Would you want to read about it in the WSJ?

## Big Picture is Critical

- Education
- Perspective
- Calm



Greg Coplans

Greg Coplans is responsible for overall management of the global legal and compliance function at Hitachi Data Systems, including global trade compliance and internal audit. He is Secretary to the Hitachi Data Systems Board of Directors, and is also responsible for general management of the Hitachi Data Systems Social Responsibility program. Coplans joined Hitachi Data Systems in 1992, as Group Legal Counsel, Asia Pacific Latin America. He became General Counsel in 2000 and served in that role until November 2005.

Coplans has a Bachelor of Commerce degree from the University of Cape Town (South Africa) and Bachelor of Laws degree from King's College, University of London. Before moving to California where he became a member of the State Bar of California, he practiced with a London law firm as a Solicitor of the Supreme Court of England and Wales.

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Elizabeth R. Monnet represents international companies that are establishing US trading companies, international companies doing business with Silicon Valley companies and Silicon Valley companies with business operations in the United Kingdom. She counsels clients on avoiding common pitfalls of trading in the United States and assists international companies in establishing and protecting brand names for the sale of their products and services in the United States.

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She is the author of "Establishing a Business Presence in the US" and "Selling Through US Agents and Distributors," published by United Kingdom Department of Trade & Industry, and has been interviewed on *Today's World*, a KOIT radio program.

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Nick Unkovic advises domestic and multinational technology and financial enterprises on corporate law. He has particular experience in strategic alliances, mergers and acquisitions, and emerging company representation. A significant portion of his work involves international transactions, especially on behalf of Asian clients.

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